

FAO No. 3426 of 2013

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 3426 of 2013

Date of Decision: September 01, 2016

Jogender

...Appellant

Versus

Sugriv Kumar Sharma & another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Anil Ghanghas, Advocate
for the appellant.

Ms. Madhu Sharma, Advocate
for respondent No.2.

AUGUSTINE GEORGE MASIH, J. (Oral):

Prayer in this appeal is for enhancing the compensation as has been granted by the Commissioner under the Workmen's Compensation Act, Circle Bhiwani, vide its award dated 28.03.2013 on three counts, first being the age of the deceased Azad Singh wrongly taken as 28 years relying upon the post-mortem report, whereas, as per the driving licence of the deceased which was produced by the respondent-Insurance Company (Ex.R-1), the age would come to 23 years on the date of accident i.e. 23.03.2005, as the date of birth mentioned on the driving licence was 26.01.1982; secondly, the deduction of period by four years interest as granted to the appellant-claimant for time consumed for leading the evidence by the appellant is also not justified as it was not the primary fault of the claimant but because of

the procedural aspect and at some times because of Court; thirdly, the non-grant of penalty, although it has been proved on record that the intimation was sent to the owner of the vehicle Shri Sugriv Kumar Sharma and the claim qua penalty has been mentioned by the Commissioner but no relief has been granted .

2. Counsel for the appellant asserts that the deceased Azad Singh son of Jagjeet Singh was aged about 20 years at the time of accident and was employed as Driver with Sugriv Kumar Sharma-respondent No.1 on truck, Eicher/Isser Tempo bearing No.KA-02-C-5243, which was insured with respondent No.2-The Oriental Insurance Company Ltd. Accident took place on 23.03.2005 when Azad Singh-deceased was under the employment of respondent No.1-Sugriv Kumar Sharma, the owner of the truck, while he was going from Pune to Sholapur. Accident took place with a tanker wherein Azad Singh died at the spot. On the basis of the evidence which has been led by the appellant-claimant, the monthly income of the deceased was assessed at ₹ 5,500/- per month but because of upper cap under the statute, ₹ 4,000/- has been taken as the wages of the deceased Azad Singh for the purpose of calculations. Assertion has been made that age of the deceased has been assessed merely on the basis of the observations given in the post-mortem report, which cannot be relied upon in the light of the driving licence (Ex.R-1), which has been produced by the respondent-Insurance Company itself according to which the date of birth of the deceased is 26.01.1982 and therefore, on the date of accident i.e. 23.03.2005, it would

be 23 years. Assertion has also been made that the interest which has been deducted for four years, which was spent in completing the evidence of the appellant-claimant is also not justified as this period was not exclusively spent at the behest of the appellant-claimant rather it was because of the procedural aspect as also because of Court when various dates were granted on this score. Penalty as provided under the statute has also been claimed, which has although been referred to but not granted. Prayer has, thus, been made for granting the benefit of age as also the interest and penalty as prayed for.

3. Counsel for respondent No.2-Insurance Company, on the other hand, asserts that the Commissioner has rightly taken into consideration the post-mortem report to assess the age of the deceased and therefore, it has been taken as 28 years. As regards the driving licence, she asserts that the same was sought to be declared as fake but, because of non-production of the records, the same has not been so declared and therefore, no reliance should be placed on that. As regards the interest, she asserts that the lower Court has rightly considered the period which has been spent by the claimant and deducted the same which he had utilized for the purpose of completing his evidence. Since the counsel is appearing for respondent No.2, she asserts that there is no evidence on record indicating that the insurance company was ever intimated with regard to the accident or the non-release of the compensation and therefore, the Commissioner has rightly proceeded to deny the benefit of penalty as has been claimed in the

present appeal.

4. I have considered the submissions made by the counsel for the parties and with their able assistance, have gone through the impugned order as also the pleadings and the evidence brought on record before the Commissioner.

5. Although the age of the deceased Azad Singh has been claimed by the appellant to be 20 years but keeping in view the fact that the date of birth of the deceased as mentioned on the driving licence is 26.01.1982 (Ex.R-1) which is produced by the insurance company and there is no other documentary evidence on record with regard to date of birth, the said date of birth is taken to be correct and accordingly, the age of the deceased at the time of accident i.e. 23.03.2005 would come to 23 years. The assertion of the counsel for respondent No.2 that the driving licence cannot be relied upon, cannot be accepted as the validity thereof has not been shaken on the basis of the evidence led by the parties. The presumption, therefore, is that the driving licence is a valid driving licence and therefore, has to be given the due credence and weightage. Accordingly, the age of the deceased-Azad Singh is assessed as 23 years on the date of the accident.

6. As regards the claim of the appellant for interest from the date of the filing of the application, suffice it to say that it was not primarily because of the appellant-claimant that the delay has occurred in the completion of the evidence. There are various reasons which would be apparent from the record would indicate that the time was consumed for

completing the evidence not merely was at the behest of the appellant but because of certain procedural aspects as also because of the Court itself. The interest, therefore, should be granted to the appellant from the date of application without deducting the period spent by him for concluding his evidence. It is, therefore, held that the appellant is entitled to interest from the date of filing of the petition without deduction of any period.

7. As regards the claim of the appellant for the grant of penalty, the evidence which has come on record indicates that the owner of the vehicle had come to know about the accident having taken place on 23.03.2005 i.e. immediately thereafter. Further the claim petition was filed on 09.09.2005 which is very near to the date of accident and the counsel for respondent-Insurance Company appeared before the Court in the case on 27.09.2005. No explanation has been given as to what stopped the respondents from granting the benefit of compensation as per the Employee's Compensation Act, 1923, after the filing of the claim petition. Merely because the intimation has not been given, cannot be a ground for denying the appellant the benefit of the statute. The appellant is, thus, held entitled to the benefit of penalty as provided under Section 4-A of the Employee's Compensation Act, 1923.

8. In view of the above, the present appeal is allowed with directions to the Commissioner under the Employee's Compensation Act, Circle Bhiwani, to reassess the compensation of the appellant-claimant as per the above orders i.e. taking the age of the deceased Azad Singh as 23

years on the date of accident, interest without interruption and penalty, within a period of four weeks from the date of receipt of copy of this order. The insurance company is directed to release the amount of reassessed compensation within a period of eight weeks from the date of assessment of the amount of compensation. It is made clear that insurance company-respondent No.2 may, if so advised, can take recourse to recover the amount of penalty from respondent No.1 in accordance with law.

9. Copy of this order and the complete records of the claim petition be sent/returned forthwith to the Commissioner under the Employee's Compensation Act, Circle Bhiwani, for information and compliance.

September 01, 2016

Harish

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No